# ASSEMBLY BILL                              No. 1093

### Introduced by Assembly Member Matthews

February 22, 2005

An act to amend Sections 204, 213, 226, and 515.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1093, as introduced, Matthews. Employment: wages.

Existing law provides that all wages, with specified exceptions, earned by any person in any employment are due and payable twice during each calendar month on predesignated days, and requires that all wages earned for labor in excess of the normal work period be paid no later than the payday for the next regular payday period. Existing law requires employers to furnish their employees, semimonthly or at the time of each payment of wages, with an itemized statement containing certain information regarding compensation and deductions from payments of wages, and provides that current or former employees of an employer have the right to inspect and copy these records and requires employers to comply with requests to inspect or copy these records within 21 calendar days from the date of the request, or be subject to penalties.

This bill would provide that nothing in those laws prohibits an employer that has expressed an employee's rate of pay as an annualized salary equivalent from paying that salary in equalized semimonthly installments, notwithstanding the varying number of days in each semimonthly period. This bill would authorize an employer to furnish the itemized statement in an electronic format, provided the electronic record contains all information required to be in the statement, and provided the employer provides the employee

with access to print the electronic record in a confidential setting during normal business hours. This bill would also provide that an employer shall be deemed to be in compliance with that law requiring the itemized written statement if the hours worked in excess of the normal work period are itemized on the statement that accompanies the pay for those hours.

Existing law prohibits any person from issuing in payment of wages due or to become due, as an advance on wages to be earned, any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless negotiable and payable on demand without discount at some established place of business in the state. Existing law provides that provision shall not prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account on any bank, savings and loan association, or credit union of the employee's choice in this state, provided the employee has voluntarily authorized the deposit, and provides that if an employee is discharged or quits, the voluntary authorization for deposit shall be deemed terminated and existing law relating to payment of wages upon termination of employment shall apply.

This bill would delete from that provision the limitation that the bank, savings and loan association, or credit union of the employee's choice be in this state, and would also delete the requirement that the voluntary authorization for deposit be terminated if the employee is discharged or quits.

Existing law requires that an employee in the computer software field be exempt from the requirement that an overtime rate of compensation be paid if certain conditions are met, including a requirement the employee's hourly rate of pay is not less than $41.00.

This bill would instead provide that requirement be that the employee's hourly rate of pay is not less than $41.00 or the annualized salary equivalent of that rate.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 204 of the Labor Code is amended to
2 read:
3     204. *(a)* All wages, other than those mentioned in Section
4 201, 202, 204.1, or 204. 2, earned by any person in any

1   employment are due and payable twice during each calendar
2   month, on days designated in advance by the employer as the
3   regular paydays. Labor performed between the 1st and 15th days,
4   inclusive, of any calendar month shall be paid for between the
5   16th and the 26th day of the month during which the labor was
6   performed, and labor performed between the 16th and the last
7   day, inclusive, of any calendar month, shall be paid for between
8   the 1st and 10th day of the following month. However, salaries of
9   executive, administrative, and professional employees of
10  employers covered by the Fair Labor Standards Act, as set forth
11  pursuant to Section 13(a)(1) of the Fair Labor Standards Act *(29*
12  *U.S.C. Sec. 213(a)(1))*, as amended through March 1, 1969, in
13  Part 541 of Title 29 of the Code of Federal Regulations, as that
14  part now reads or may be amended to read at any time hereafter,
15  may be paid once a month on or before the 26th day of the month
16  during which the labor was performed if the entire month's
17  salaries, including the unearned portion between the date of
18  payment and the last day of the month, are paid at that time.
19  ~~Notwithstanding~~
20  *(b) (1) Notwithstanding* any other provision of this section, all
21  wages earned for labor in excess of the normal work period shall
22  be paid no later than the payday for the next regular payroll
23  period.
24  ~~However~~
25  *(2) An employer shall be deemed to be in compliance with the*
26  *requirements of subdivision (a) of Section 226 if the hours*
27  *worked in excess of the normal work period are itemized on the*
28  *statement accompanying the pay for those hours.*
29  *(c) Notwithstanding subdivision (a) or (b)*, when employees
30  are covered by a collective bargaining agreement that provides
31  different pay arrangements, those arrangements shall apply to the
32  covered employees.
33  *(d)* The requirements of this section shall be deemed satisfied
34  by the payment of wages for weekly, biweekly, or semimonthly
35  payroll if the wages are paid not more than seven calendar days
36  following the close of the payroll period.
37  SEC. 2.  Section 213 of the Labor Code is amended to read:
38  213.  Nothing contained in Section 212 shall:
39  (a) Prohibit an employer from guaranteeing the payment of
40  bills incurred by an employee for the necessaries of life or for the

1   tools and implements used by the employee in the performance
2   of his *or her* duties.
3     (b) Apply to counties, municipal corporations, ~~quasi municipal~~
4   *quasi-municipal* corporations, or school districts.
5     (c) Apply to students of nonprofit schools, colleges,
6   universities, and other nonprofit educational institutions.
7     (d) Prohibit an employer from depositing wages due or to
8   become due or an advance on wages to be earned in an account
9   in any bank, savings and loan association, or credit union of the
10  employee's choice ~~in this state~~, provided *that* the employee has
11  voluntarily authorized ~~such~~ *that* deposit. ~~If an employer~~
12  ~~discharges an employee or the employee quits such voluntary~~
13  ~~authorization for deposit shall be deemed terminated and the~~
14  ~~provisions of this article relating to payment of wages upon~~
15  ~~termination of employment shall apply.~~
16    SEC. 3. Section 226 of the Labor Code is amended to read:
17    226. (a) *(1)* Every employer shall, semimonthly or at the
18  time of each payment of wages, furnish each of ~~his or her~~ *its*
19  employees, either as a detachable part of the check, draft, or
20  voucher paying the employee's wages, or separately when wages
21  are paid by personal check or cash, an accurate itemized *written*
22  statement ~~in writing~~ showing ~~(1) gross~~ *all of the following:*
23    *(A) Gross* wages earned, ~~(2) total~~.
24    *(B) Total* hours worked by the employee, except for any
25  employee whose compensation is solely based on a salary and
26  who is exempt from payment of overtime under subdivision (a)
27  of Section 515 or any applicable order of the Industrial Welfare
28  Commission, ~~(3) the~~.
29    *(C) The* number of piece-rate units earned and any applicable
30  piece rate if the employee is paid on a piece-rate basis, ~~(4) all~~.
31    *(D) All* deductions, provided that all deductions made on
32  written orders of the employee may be aggregated and shown as
33  one item, ~~(5) net~~.
34    *(E) Net* wages earned, ~~(6) the~~.
35    *(F) The* inclusive dates of the period for which the employee is
36  paid, ~~(7) the~~.
37    *(G) The* name of the employee and his or her social security
38  number, except that by January 1, 2008, only the last four digits
39  of his or her social security number or an existing employee

1  identification number other than a social security number may be
2  shown on the check, (8) the.
3  (H) The name and address of the legal entity that is the
4  employer, and (9) all.
5  (I) All applicable hourly rates in effect during the pay period
6  and the corresponding number of hours worked at each hourly
7  rate by the employee. The
8  (2) The deductions made from payments of wages shall be
9  recorded in ink or other indelible form, properly dated, showing
10  the month, day, and year, and a copy of the statement or a record
11  of the deductions shall be kept on file by the employer for at least
12  three years at the place of employment or at a central location
13  within the State of California.
14  (b) An employer that is required by this code or any regulation
15  adopted pursuant to this code to keep the information required by
16  subdivision (a) shall afford *every* current and former employees
17  *employee* the right to inspect or copy the records pertaining to
18  that *the particular* current or former employee, upon reasonable
19  request to the employer. The employer may take reasonable steps
20  to assure the identity of a current or former employee. If the
21  employer provides copies of the records, the actual cost of
22  reproduction may be charged to the current or former employee.
23  (c) An employer who *that* receives a written or oral request to
24  inspect or copy records pursuant to subdivision (b) pertaining to
25  a current or former employee shall comply with the request as
26  soon as practicable, but no later than 21 calendar days from the
27  date of the request. A violation of this subdivision is an
28  infraction. Impossibility of performance, not caused by or a result
29  of a violation of law, shall be an affirmative defense for an
30  employer in any action alleging a violation of this subdivision.
31  An employer may designate the person to whom a request under
32  this subdivision will be made.
33  (d) This section does not apply to any employer of any person
34  employed by the owner or occupant of a residential dwelling
35  whose duties are incidental to the ownership, maintenance, or use
36  of the dwelling, including the care and supervision of children, or
37  whose duties are personal and not in the course of the trade,
38  business, profession, or occupation of the owner or occupant.
39  (e) An employee suffering injury as a result of a knowing and
40  intentional failure by an employer to comply with subdivision (a)

1   is entitled to recover the greater of all actual damages or fifty
2   dollars ($50) for the initial pay period in which a violation occurs
3   and one hundred dollars ($100) per employee for each violation
4   in a subsequent pay period, not exceeding an aggregate penalty
5   of four thousand dollars ($4,000), and is entitled to an award of
6   costs and reasonable attorney's fees.
7       (f)  A failure by an employer to permit a current or former
8   employee to inspect or copy records within the time set forth in
9   subdivision (c) entitles the current or former employee or the
10  Labor Commissioner to recover a seven hundred fifty dollar
11  ($750) penalty from the employer.
12      (g)  An employee may also bring an action for injunctive relief
13  to ensure compliance with this section, and is entitled to an
14  award of costs and reasonable attorney's fees.
15      (h)  This section does not apply to the state, to any city, county,
16  city and county, district, or to any other governmental entity,
17  except that if the state or a city, county, city and county, district,
18  or other governmental entity furnishes its employees with a
19  check, draft, or voucher paying the employee's wages, the state
20  or a city, county, city and county, district, or other governmental
21  entity shall, by January 1, 2008, use no more than the last four
22  digits of the employee's social security number or shall use an
23  existing employee identification number other than the social
24  security number on that check, draft, or voucher.
25      *(i) Nothing in this section or in Section 204 prohibits an*
26  *employer that has expressed an employee's rate of pay as an*
27  *annualized salary equivalent from paying that salary in*
28  *equalized semimonthly installments, notwithstanding the varying*
29  *number of days in each semimonthly period.*
30      *(j) Notwithstanding any other provision of law, an employer*
31  *may furnish the itemized statement required by subdivision (a) in*
32  *an electronic format, provided that the electronic record contains*
33  *all the information required by this section, and provided that the*
34  *employer, during normal business hours, provides the employee*
35  *with electronic access in a confidential setting to print the*
36  *itemized statement.*
37      SEC. 4.  Section 515.5 of the Labor Code is amended to read:
38      515.5.  (a)  Except as provided in subdivision (b), an employee
39  in  the  computer  software  field  shall  be  exempt  from  the

1  requirement that an overtime rate of compensation be paid
2  pursuant to Section 510 if all of the following apply:
3    (1) The employee is primarily engaged in work that is
4  intellectual or creative and that requires the exercise of discretion
5  and independent judgment~~, and the~~.
6    *(2) The* employee is primarily engaged in duties that consist of
7  one or more of the following:
8    (A) The application of systems analysis techniques and
9  procedures, including consulting with users, to determine
10  hardware, software, or system functional specifications.
11    (B) The design, development, documentation, analysis,
12  creation, testing, or modification of computer systems or
13  programs, including prototypes, based on and related to~~,~~ user or
14  system design specifications.
15    (C) The documentation, testing, creation, or modification of
16  computer programs related to the design of software or hardware
17  for computer operating systems.
18    ~~(2)~~
19    *(3)* The employee is highly skilled and is proficient in the
20  theoretical and practical application of highly specialized
21  information to computer systems analysis, programming, and
22  software engineering. A job title shall not be determinative of the
23  applicability of this exemption.
24    ~~(3)~~
25    *(4)* The employee's hourly rate of pay is not less than
26  forty-one dollars ($41.00)*, or the annualized salary equivalent of*
27  *that rate*. The Division of Labor Statistics and Research shall
28  adjust this pay rate on October 1 of each year to be effective on
29  January 1 of the following year by an amount equal to the
30  percentage increase in the California Consumer Price Index for
31  Urban Wage Earners and Clerical Workers.
32    (b) The exemption provided in subdivision (a) does not apply
33  to an employee if any of the following apply:
34    (1) The employee is a trainee or employee in an entry-level
35  position who is learning to become proficient in the theoretical
36  and practical application of highly specialized information to
37  computer systems analysis, programming, and software
38  engineering.

1    (2) The employee is in a computer-related occupation but has
2  not attained the level of skill and expertise necessary to work
3  independently and without close supervision.
4    (3) The employee is engaged in the operation of computers or
5  in the manufacture, repair, or maintenance of computer hardware
6  and related equipment.
7    (4) The employee is an engineer, drafter, machinist, or other
8  professional whose work is highly dependent upon or facilitated
9  by the use of computers and computer software programs and
10  who is skilled in computer-aided design software, including
11  CAD/CAM, but who is not in a computer systems analysis or
12  programming occupation.
13    (5) The employee is a writer engaged in writing material,
14  including box labels, product descriptions, documentation,
15  promotional material, setup and installation instructions, and
16  other similar written information, either for print or for onscreen
17  media or who writes or provides content material intended to be
18  read by customers, subscribers, or visitors to computer-related
19  media such as the World Wide Web or ~~CD-Roms~~ *CD-ROMs*.
20    (6) The employee is engaged in any of the activities set forth
21  in subdivision (a) for the purpose of creating imagery for effects
22  used in the motion picture, television, or theatrical industry.

O